

NOT FOR PUBLICATION--FOR UPLOAD ONLY

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ANDRE MANASSARAM,

Plaintiff,

v.

**JACOBS INDUSTRIAL
MAINTENANCE COMPANY, L.L.C.
("JACOBS/IMC") and HOVENSA,
L.L.C. ("HESS"),**

Defendants.

CIVIL NO. 2001/0052

**TO: Lee J. Rohn, Esq.
C. Beth Moss, Esq.
Michael J. Sanford, Esq.**

ORDER FOR CONFERENCE BETWEEN ATTORNEYS

THIS MATTER is before the Court upon Plaintiff's Motion to Compel Jacobs/IMC (Docket No. 113).

Local Rule of Civil Procedure 37.1 provides, in relevant part:

No motion relative to discovery shall be accepted for filing unless accompanied by a certificate of counsel for the moving party, stating that counsel have met and conferred for purposes of amicably resolving issues and stating why they are unable to agree or stating that opposing counsel has refused to so meet and confer after reasonable notice. Counsel for the moving party shall arrange the conference. If the court finds that opposing counsel has willfully refused to meet and confer or, having met, willfully refused or failed to confer in good faith, the court may impose such sanctions as it deems proper.

LRCi 37.1. Plaintiff appears to be well aware of this Rule, because he includes, at the end of his motion, a paragraph with the heading, "Certification pursuant to LRCi37.1" in all capital letters.

However, the information contained within the said paragraph falls far short of demonstrating compliance with the Rule. The first sentence references a meet and confer that occurred in 2002 regarding interrogatory requests that are not even at issue in Plaintiff's current motion. The second sentence states that, "[o]n May 23, 20-03 [sic], the parties met and conferred regarding the Demand for Production of Documents and document number 8 Listed on the Privilege Log. (Exhibit '1')." Motion at 15. Exhibit 1 consists of one (1)-page correspondence dated May 23, 2003, from Plaintiff's counsel to Defendant Jacobs/IMC's counsel directing her either to provide the requested information within ten (10) days or to contact Plaintiff's counsel's office "within the next three (3) days and provide a date wherein you are available to meet and confer regarding these discovery issues." Motion, Exhibit 1.

It is clear from the plain language of the Rule itself and from previous rulings from this Court that a single communication, sent almost eighteen (18) months prior to the filing of the motion, demanding compliance or response within a very short period of time does not constitute reasonable notice and is inadequate to demonstrate compliance with the Rule. Moreover, a non-response to such correspondence may not, in and of itself, be construed as an outright refusal to meet and confer. On its face, the Rule requires the moving party to "arrange" the conference. Correspondence such as the one provided by Plaintiff cannot in any way be viewed as "arranging" a conference. In this particular instance, follow-up correspondence or telephone contact was required.

Because the Court finds that counsel have not met and conferred as required by LRCi 37.1, nor was such an attempt even made, the Court will strike Plaintiff's Motion to Compel Jacobs/IMC at this time and order Plaintiff's counsel to arrange a conference to discuss Plaintiff's Demand For Production of Documents which are the subject of Plaintiff's said Motion. Any failure or refusal

by opposing counsel to so meet and confer will result in appropriate sanctions. If, after such conference, the parties still are unable to reach agreement with regard to any of the disputed discovery requests, Plaintiff may re-file his motion, detailing the results of the conference of counsel.

Accordingly, it is now hereby **ORDERED**:

1. Plaintiff's Motion to Compel Jacobs/IMC (Docket No. 113) is **STRICKEN**.
2. Plaintiff's counsel and counsel for Defendant Jacobs/IMC **shall** meet and confer, at time and place mutually convenient, on or before **Friday, December 9, 2004**.
3. If, after such conference, any dispute regarding any or all of the discovery requests at issue remains, Plaintiff may re-file his motion to compel, with a proper LRCi 37.1 certification and including the details of such conference of counsel.
4. Any failure or refusal to meet and confer or to meet and confer in good faith shall result in sanctions.

ENTER:

Dated: November 17, 2004

_____/S/_____
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE

ATTEST:

WILFREDO F. MORALES
Clerk of Court

By: _____
Deputy Clerk